



[Billing Code 3290-F8]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**[Docket Number USTR-2018-0010]**

**[Dispute Number WT/DS539]**

**WTO Dispute Settlement Proceeding Regarding Korea – Anti-dumping and  
Countervailing Duties on Certain Products and the Use of Facts Available**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that the Republic of Korea (Korea) has requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). That request may be found at [www.wto.org](http://www.wto.org) in a document designated as WT/DS539/6. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, you should submit your comment on or before July 16, 2018, to be assured of timely consideration by USTR.

**ADDRESSES:** USTR strongly prefers electronic submissions made the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting

comments in Section III below. The docket number USTR-2018-0010. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395-9483.

**FOR FURTHER INFORMATION CONTACT:** Associate General Counsel Brian Janovitz at (202) 395-7139 or Assistant General Counsel Philip Butler at (202) 395-5804.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that the United States has received a request for a dispute settlement panel pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes. The WTO has established a dispute settlement panel, and the panel will hold its meetings in Geneva, Switzerland.

**II. Major Issues Raised by the Republic of Korea**

On April 16, 2018, Korea requested the establishment of a WTO dispute settlement panel regarding the use by the U.S. Department of Commerce (DOC) of facts available in various segments of the following investigations:

- *Anti-Dumping Duties on Certain Corrosion-Resistant Steel Products from the Republic of Korea* (DOC investigation number A-580-878).
- *Anti-Dumping Duties on Certain Cold-Rolled Steel Flat Products from the Republic of*

*Korea* (USDOC investigation number A-580-881).

- *Countervailing Duties on Certain Cold-Rolled Steel Flat Products from the Republic of Korea* (DOC investigation number C-580-882).
- *Anti-Dumping Duties on Certain Hot-Rolled Steel Flat Products from the Republic of Korea* (DOC investigation number A-580-883).
- *Countervailing Duties on Certain Hot-Rolled Steel Flat Products from the Republic of Korea* (DOC investigation number C-580-884).
- *Anti-Dumping Duties on Large Power Transformers from the Republic of Korea* (DOC investigation number A-580-867).

Korea alleges that the challenged measures are inconsistent with U.S. WTO obligations under Article 6.8 and Annex II of the Anti-Dumping Agreement and Article 12.7 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Korea further alleges that the United States failed to comply with a number of supposedly related procedural and substantive obligations under the Anti-Dumping Agreement and the SCM Agreement.

In addition, Korea alleges that section 776 of the Tariff Act of 1930, codified at 19 U.S.C. 1677e, as amended by section 502 of the Trade Preferences Extension Act of 2015, and the certain related legal provisions governing the use of facts available, are “as such” inconsistent with the Anti-Dumping Agreement and the SCM Agreement. Korea also challenges DOC’s “use of adverse facts available” as a purported “ongoing conduct, or rule or norm” when DOC allegedly “selects facts from the record that are adverse to the interests of the foreign producers or exporters without (i) establishing that the adverse inferences can reasonably be drawn in light of the degree of cooperation received, and (ii)

ensuring that such facts are the ‘best information available’ in the particular circumstances.”

### **III. Public Comments: Requirements for Submissions**

USTR invites written comments concerning the issues raised in this dispute. All submissions must be in English and sent electronically via [www.regulations.gov](http://www.regulations.gov). To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR-2018-0010 on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “notice” under “document type” on the left side of the search-results page, and click on the link entitled “comment now!” For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on “How to Use Regulations.gov” on the bottom of the home page.

The [www.regulations.gov](http://www.regulations.gov) website allows users to provide comments by filling in a “type comment” field, or by attaching a document using an “Upload file” field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type “see attached” in the “type comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the “type comment” field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly

marked “BUSINESS CONFIDENTIAL” on the top and bottom of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these products are not sufficient to protect business confidential information or otherwise protect business interests, please contact Sandy McKinzy at (202) 395-9483 to discuss whether alternative arrangements are possible.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR-2018-0010, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute

settlement panel is convened, or in the event of an appeal from a panel, USTR will make the following documents publicly available at [www.ustr.gov](http://www.ustr.gov): the U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the website of the World Trade Organization, at [www.wto.org](http://www.wto.org).

Juan Millan,

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Office of the U.S. Trade Representative.

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